REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1476 OF 2006

Heinz India Pvt. Ltd. & Anr. ...Appellants

Versus

State of U.P. & Ors. ...Respondents

(With Civil Appeal No.1478/2006, Civil Appeal No.1477/2006 and W.P. (C) No.144/2005)

J U D G M E N T

T.S. THAKUR, J.

1. These appeals by special leave arise out of an order dated 20th August, 2004, passed by the High Court of Judicature at Allahabad whereby a batch of writ petitions challenging an order passed by the Director, Rajya Krishi Utpadan Mandi Parishad, Lucknow, dated 3rd July, 1997,

under Section 32 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter called 'the Act'), have been dismissed. The order passed by the Director, Rajya Krishi Utpadan Mandi Parishad pertained to 19 revision petitions of which 8 petitions were filed by Glaxo India Ltd. relevant to the period 1st November, 1990 to 30th September, 1994 while the remaining 11 petitions pertained to Heinz India Pvt. Ltd. relevant to the period between 1st October, 1994 and 31st May, 1996. During the pendency of the Special Leave Petitions, Writ Petition (C) No.144/2005 was filed under Article 32 of the Constitution of India, *inter alia*, praying for a writ of certiorari, quashing order dated 25th September, 2004 passed by the Deputy Director (Administration) Krishi Utpadan Mandi Parishad, Gomti Nagar, Lucknow in another batch of revision petitions (pertaining to the period between 3rd June, 1996 and 30th April, 2004) and an assessment order dated 7th July, 1998 passed by the Krishi Utpadan Mandi Samiti, Aligarh. A declaration to the effect that the goods removed from the petitioner's unit at Aligarh to places outside the State of Uttar Pradesh were by way of stock transfer and no Mandi

Fee was payable on such transfers has also been prayed for. The facts giving rise to the appeals and the writ petition may be summarised as under:

2. Glaxo India Ltd., set up an industrial unit at Aligarh for the manufacture of what is sold in the market under the brand names Glacto, Complan, Farex, Glucon D and other products generically called milk foods/weaning foods and energy beverages. It is not in dispute that the manufacturing process undertaken in the said unit produced *ghee* as a by-product of the said items. It is also not in dispute that with effect from 1st October, 1994, the Family Products Division of Glaxo India Ltd. was taken over by Heinz India Pvt. Ltd. who continued manufacturing the products mentioned above including *ghee* as a by-product of its manufacturing activity.

3. In terms of Section 17(iii) of the Act, sale of specified agricultural produce within the Mandi limits attracts levy of what is described as Mandi Fee from the person effecting the sale. The Mandi Samiti accordingly started demanding the said fee from Glaxo India Ltd., upto the year 1994 and from Heinz India Ltd., from 1994 onwards *qua* sales

effected by the said two companies of its products including *ghee.* These demands were resisted by both the companies primarily on the ground that bulk of the *ghee* produced in their unit at Aligarh, if not the entire quantity, was sent out of the Mandi limits on stock transfer basis and that there was no sale involved in such transfers so as to attract the levy of the Mandi Fee on the same. Even so, the companies appear to have continued removing their goods from the Mandi limits in accordance with the procedure in vogue at the relevant time. In ***Krishi Utpadan Mandi Samiti & Ors. v. Shree Mahalaxmi Sugar Works & Ors. (1995) Supp (3) SCC 433***, decided on 2nd February, 1995, this Court noticed the Explanation to Section 17(iii) of the Act and observed that there was a presumption against the dealers. This Court held that in view of the said presumption it is open to the Mandi Samiti to raise demands against the dealers before the issue of passes. If there is a valid rebuttal to the presumption and it is shown that no sale took place within the notified market area the dealers will be entitled to the passes, otherwise not. This Court further held that even if the dealers are compelled to

pay the market fee as demanded it shall be open to them to challenge the same in the manner provided under the Act. This implied that if the claim of the dealers that the goods were not being removed pursuant to any sale transaction was rejected and a demand for payment of Mandi Fee raised, the aggrieved dealer could question that demand in appropriate proceedings.

4. It is evident from a reading of the order passed by the Mandi Parishad that the earlier procedure of issuing free gate passes remained in vogue upto February, 1995, whereafter the Mandi Samiti started issuing gate passes only on payment of the Mandi Fee demanded by it. This change came about as a result of the aforementioned decision of this Court in ***Shree Mahalaxmi Sugar Works*** (supra). Subsequently, in ***Krishi Utpadan Mandi Samiti v. M/s Saraswati Cane Crusher & Ors. (Civil Appeal Nos. 1769-1773 of 1998),*** decided on 25th March, 1998 this Court prescribed the procedure to be followed in the matter of issue of gate passes, making of provisional assessment and the time frame for making a final assessment.

"We are satisfied that the orders of this Court afore-referred to would need some repair work. We treat the said order to be conceiving of a provisional assessment where after doors are opened for a final assessment. We conceive that when demands are raised by the Krishi Utpadan Mandi Samiti against a trader before he could ask for transit of goods outside the market area, the trader would be entitled to tender a valid rebuttal to say that no sale had taken place within the notified area and that if the explanation is accepted there and then by the Mandi Samiti, no question of payment would arise as also of withholding the gate passes. If prima facie evidence led by the trader is not accepted by the Mandi Samiti, the trader or the dealer can be compelled to pay the market fee as demanded before issuance of gate pass. If the trader makes the payment without demur, the matter ends and the assessment finalized. But in case he does so and raises protest, then the assessment shall be taken to be provisional in nature making it obligatory on the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged and the provisional assessment has been made, a time frame would be needed to devise making the final assessment. We, therefore, conceive that it innately be read in the order of this Court that a final assessment has to be made within a period of two months after provisional assessment so that the entire transaction in that respect is over enabling the aggrieved party, if any, to challenge the final assessment in the manner provided under the afore Act or under the general law of the land in appropriate fora. Having added this concept in this manner in the two Judge Bench decision of this Court, we declare that what repair has been done instantly would add to the order of the High Court and the instant corrective decision shall be the governing rule. The Civil Appeals would thus stand disposed of.

Since the assessment thus far made against the traders, who are involved in the instant appeals, would have to be treated as provisional awaiting final assessment, we permit the concerned traders to move the respective Mandi Samiti within two months from today to hear their objections and proceedings onwards be regulated in accordance with procedure devised hereinbefore. Nonetheless we add that should the basis of provisional assessment be knocked off, the Samiti would refund the market fee to the traders/dealers within two months thereafter."

5. Suffice it to say that according to the above decision the dealers could make a claim for the refund of the amount paid by them on furnishing of proof of the fact that the goods had moved out of the mandi area without being subjected to a transaction of sale.

6. What is important for the present is that Heinz made claims for the refund of the amount paid by it towards market fee and furnished to the Mandi Samiti material to support that claim. The material so produced was then evaluated by the Mandi Samiti who came to the conclusion that the same was not sufficient to rebut the statutory presumption that the removal of goods from the Mandi limits was pursuant to a sale effected within such limits. The claim for refund of the amount paid by the appellant-Heinz was accordingly rejected by the Mandi Samiti in terms of the orders referred to earlier.

7. Aggrieved by the order passed by the Mandi Samiti both Glaxo India Ltd. and Heinz India Pvt. Ltd. filed revision petitions before the Director, Mandi Parishad, invoking his jurisdiction under Section 32 read with Section 33 of the Act

as a delegate of the Mandi Parishad. By his order dated 24th October, 1996, the Director dismissed the revision petitions, aggrieved whereof the companies filed Writ Petitions before the High Court of Allahabad. These Writ Petitions were eventually allowed by the High Court in terms of an order dated 3rd April, 1997, and the matter remitted back to the Director for a fresh consideration and disposal in accordance with law.

8. The Director accordingly heard the revision petition afresh, re-appraised the material relied upon by the companies in support of their claim for refund and came to the conclusion that the claim of the companies for refund remained unsubstantiated and the presumption arising under the Explanation to Section 17(iii) un-rebutted. The Director observed:

> *"17.....*
>
> *(3) Neither the evidences produced by Revisionist company with the details of information of sale has been given to C & F Agent with dates on the basis of which C & F Agent would deliver the goods to the buyer after receipt of payment nor any instance has been produced for giving required instructions to C & F Agent regarding the sale of goods and nor even any evidence has been produced. In this way, the evidence produced*

regarding the actual mode of sale at the place of destination as to how and by whom it is being done, are contradictory or are missing. Mandi Samiti gave time to revisionist for clarifying and proving this sale process but, the revisionist has not been able to produce clear case and desired evidence on this subject till date.

(4) When the chain related to the sale at the place of destination in accordance with aforesaid through stock transfer breaks then while keeping in view the declaration given under Excise Rule 52(A)/173C, two possibilities appear. First is that the sale agreement for deal at the place of destination and according to marketing system given in letter dated 4.1.95 it may be, that the Revisionist company by itself or through its marketing staff who might be visiting the place of destination give the delivery of goods to C & F Agent by fixing before the arrival of goods at the place of destination after receiving amount of money in the form of bank draft and pay order which resulted in the sale having taken place from the factory at Aligarh office because the direct contact of buyer with revisionist took place at Aligarh or it took place through the employees/officers of revisionist's marketing department at Aligarh and they were given the delivery on that basis only.

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19. In this way by the analysis and close consideration of said paras 16, 17 and 18 it is concluded that under the arrangement given by Hon'ble Supreme Court in 1995 (Supp.3) S.C.C. 433 the sale taking place in the matter of M/s Mahalaxmi Sugar Works, Revisionist's disputed transmitted and its sale taking place at the place of destination by taking stock outside the mandi area in the form of stock transfer and the concept of taking out the sale under explanation of 17(3)(B), it has failed to prove by producing counter valid rebuttal of concept because according to the case went for revision on stock transfer and place of destination it has failed to tell the presence by producing the best chain of evidence for proving...."

9. Writ Petition Nos. 2320(M/S), 2516(M/S), 2517(M/S), 2518(M/S), 2519(M/S), 250(M/S), 226(M/S) and 2527(M/S) of

1997 filed by Glaxo India Ltd., before the High Court of Allahabad challenged the correctness of the above order. Heinz India Pvt. Ltd. also filed Writ Petition Nos. 2323(M/S), 2321(M/S), 2322(M/S), 2324(M/S), 2325(M/S), 2326(M/S), 2474(M/S), 2475(M/S), 2476(M/S), 2477(M/S) and 2478(M/S) of 1997 before the High Court challenging the same order. The High Court, however, concurred with the view taken by the Mandi Samiti and the Director of the Parishad and dismissed the writ petitions by its order dated 20th August, 2004. The High Court held that the material produced by the companies did not make out a case for refund for it did not rebut the presumption that *ghee* produced in the company's unit at Aligarh was not sold from Aligarh or that the stocks of *ghee* had been transferred outside the Mandi limit on consignment basis. The High Court gave several reasons for holding that the material produced by the companies in support of their claim that the so called sales were in fact stock transfer was either not reliable or was deficient. High Court also held that the companies had withheld the best evidence available to them without offering any explanation for doing so. The High Court said:

> *"The long and short of the discussions made above is that the petitioners have miserably failed to rebut the presumption of sale in the market area at Aligarh and therefore, the Director and the assessing authorities rightly levied the Mandi fee on the consignments of Ghee transported by Glaxo and its successor Heinz India Private Limited to other States. The judgments passed by the Revisional Authority are not perverse so as to be interfered with by this Court; rather all the questioned judgments are well discussed and reasoned. In the result, the petitioners are not entitled to claim any relief."*

10. The present appeals assail the above order as already mentioned.

11. We have heard the learned counsels of the parties at considerable length. Three questions fall for our determination. These are:

1. Whether the Krishi Utpadan Mandi Adhiniyam does not contain the necessary machinery provisions for assessment of the fees and for adjudication of disputes in relation thereto? If so to what effect?

2. What precisely is the correct legal standard/test for determining whether or not the presumption arising under the Explanation to Section 17(iii) of the Act has been rebutted?

And

3. Whether the orders passed by the Mandi Utpadan Samiti and that passed by the Director, as delegate of the Mandi Parishad, suffer from any legal infirmity to call for interference?

Re: Question No.1

12. This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in ***Kunnathat Thathunni Moopil Nair etc., v. State of Kerala and Anr. (AIR 1961 SC 552)*** examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to

be followed in making the assessment. It was left to the Executive to evolve the requisite machinery and procedure thereby making the whole thing from beginning to end purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi-judicial exercise. Speaking for the majority Sinha, C.J. said:

> *"Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher Civil Court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of s. 3 of the Madras Revenue Recovery Act, 1864, the land-holders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character*."
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> (emphasis supplied)

13. In ***Rai Ramkrishna and Ors. etc. v. State of Bihar (AIR 1963 SC 1667)*** this Court was examining the constitutional validity of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in ***Kunnathat Thathunni Moopil Nair*** (supra) this Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statue is a cloak adopted by the legislature for achieving its confiscatory purpose.

14. In ***Raja Jagannath Baksh Singh v. State of Uttar Pradesh and Anr. (AIR 1962 SC 1563)*** this Court was examining the constitutional validity of U.P. Large Land

Holdings Tax Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, this Court held:

> *"....if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the Courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenge as contravening Article 19(1)(f)."*
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> (emphasis supplied)

15. In ***The State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors. (AIR 1967 SC 1458)***, this Court was examining the constitutional validity of Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act (22 of 1962) as amended by Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments this Court observed:

> *"...if S.6 is put aside, there is absolutely no provision in the Act prescribing the mode of assessment. Section 3*

and 4 are charging sections and they say in effect that a person will have to pay an additional assessment per acre in respect of both dry and wet lands. They do not lay down how the assessment should be levied. No notice has been prescribed; no opportunity is given to the person to question the assessment on his land. There is no procedure for him to agitate the correctness of the classification made by placing his land in a particular class with reference to ayacut, acreage or even taram. The Act does not even nominate the appropriate officer to make the assessment to deal with questions arising in respect of assessments and does not prescribe the procedure for assessment. The whole thing is left in a nebulous form. Briefly stated, under the Act there is no procedure for assessment and however grievous the blunder made there is no way for the aggrieved party to get it corrected. This is a typical case where a taxing statute does not provide any machinery of assessment."

(emphasis supplied)

16. The appeals filed by the State against the judgment of the High Court striking down the enactment were on the above basis dismissed.

17. Reference may also be made to ***M/s Vishnu Dayal Mahendra Pal and Ors. v. State of Uttar Pradesh and Ors. (1974) 2 SCC 306***, and ***D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala and Anr. (1980) 2 SCC 410***, where this Court held that sufficient guidance were available from the preamble and other provisions of the Act. The members of the committee owe a duty to be conversant with the same and discharge their functions in

accordance with the provisions of the Act and the Rules and that in cases where the machinery for determining annual value has been provided in the Act and the Rules of the local authority, there is no reason or necessity of providing same or similar provisions in the other Act or Rules.

18. There is no gainsaying that a total absence of machinery provisions for assessment/recovery of the tax levied under an enactment, which has the effect of making the entire process of assessment and recovery of tax and adjudication of disputes relating thereto administrative in character, is open to challenge before a Writ Court in appropriate proceedings. Whether or not the enactment levying the tax makes a machinery provision either by itself or in terms of the Rules that may be framed under it is, however, a matter that would have to be examined in each case. In our opinion, it is not necessary to dilate any further on this aspect in the context of the provisions of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 having regard to the fact that the question whether the said Act provides a suitable machinery for assessment and recovery of the fee has been examined by this Court in ***Ram***

Chandra Kailash Kumar & Co. & Ors. v. State of U.P. & Anr. 1980 (Supp) SCC 27. That decision arose out of a writ petition filed before the High Court of Allahabad challenging the constitutional validity of the Adhiniyam. The High Court had dismissed the challenge to the constitutional validity of the enactment which order was then assailed before this Court in an appeal by special leave. This Court formulated as many as 24 distinct points for determination based on the grounds that were urged in support of the challenge. One of the points that fell for consideration was whether the rules framed under the Act provide for any machinery for adjudication of disputes in addition to the factum and quantum of liability arising as under the Act. The contention precisely was that neither the Act nor the rules made any provision for adjudication of disputes that would arise on both these aspects. While rejecting the submission on behalf of the Marketing Committee that no such disputes actually exist or are likely to exist which would require any machinery of the Market Committee for adjudication, this Court observed:

> *"xxxxxxx A machinery for adjudication of dispute is necessary to be provided under the rules for proper*

functioning of the market committees. We have already observed and expressed our hope for bringing into existence such machinery in one form or the other. But it is not correct to say that in absence of such a machinery no market fee can be levied or collected. If a dispute arises then in the first instance the market committee itself or any sub-committee appointed by it can give its finding which will be subjected to challenge in any Court of law when steps are taken for enforcement of the provisions for realisation of the market fee."

19. It is evident from the above that this Court had specifically rejected the contention that in the absence of any machinery under the Act and the Rules no market fee could be levied or collected. That being so, it not necessary for us to either re-examine that aspect or to take a contrary view contrary at this stage.

20. Mr. Sudhir Chandra, learned senior counsel appearing for the appellant-company, however, contended that the hope expressed by this Court that a comprehensive machinery provision shall be made for adjudication of disputes has been belied by the inaction of the respondents for over 30 years which calls for suitable directions and/or guidelines to the State as also to the authorities under the Act to make necessary machinery provisions especially when serious disputes involving substantial sums of money

towards market fee are arising for adjudication without there being a semblance of an adjudicatory mechanism or judicial approach in the matter of adjudication of such disputes. Elaborating his submissions Mr. Chandra contended that while the Market Committee examines the question of refund of the fee paid by the seller of any produce, any dispute touching the correctness of any such adjudication or assessment by the committee is examinable by the Board in terms of Section 32 of the Act. Since the Board is a multi-member body any exercise in the nature of review or revision of the order passed by the Committee on the claim for refund cannot be undertaken by the Board itself, the practice that is followed is that such revisions are heard and decided by the Director to whom the revisional powers of the Board are delegated in terms of Section 33 of the Act. What according to Mr. Chandra is surprising is that even the Director does not hear the matters himself. The actual disposal of the revision is left to a junior officer to whom the Director may assign the case for disposal. Hearing by any such junior officer who is neither by training nor by qualification suited for such determination of

complicated issues regarding the liability of the purchaser or seller of goods within a market area makes the entire process of determination farcical. A machinery for adjudication of disputes can be said to have been provided for only if the same ensures a fair and objective adjudication of the matters in disputes at the hands of the authority who is either by reasons of his training, experience or qualification fit to determine the controversy. So long as such a provision is absent in the scheme of the Act, the requirement of machinery for adjudication of disputes must be deemed to be absent, argued Mr. Chandra.

21. Section 32 of the Act empowers the Board to call for and examine the proceedings of the Committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by a Committee and to pass such orders thereon as it may deem fit including an order modifying, annulling or reversing any such decision or order of the Committee. Dealers aggrieved of an order of assessment or an order declining refund of the fee paid by them are entitled to question the correctness of any such

demand in terms of the said provision which is in the nature of a revisional power vested in the Board. It is common ground that the dealers in the present case had invoked the said power of the Board under Section 32. It is also common ground that the revisions so filed have been entertained and dealt with on merits. What is unsatisfactory according to the dealers is the fact that the revisions have been dealt with by an officer authorised by the Director. Mr. Chandra did not dispute the proposition that the power vested in the Board including that under Section 32 of the Act could be exercised by the Director as a delegate of the Board keeping in view the provisions of Section 33 of the Act which permits such delegation. Sections 32 and 33 read as under:

> *"32.* ***Powers of the [Board] to call for the proceedings of a Committee and pass orders thereon. -*** *The [Board] may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by, a Committee, at any time call and examine the proceedings of the Committee, and, where it is of the opinion that the decision or order of the Committee should be modified, annulled or reversed, pass such orders thereon as it may deem fit.*
>
> *33.* ***Delegation of powers. –*** *The Board may, by regulations, delegate subject to such conditions and restrictions and in such manner, as may be specified therein, any of its powers to the Director."*

22. What, according to the learned counsel for the appellants, was unacceptable is the fact that the revisions could be heard and disposed of even by an officer authorised by the Director. This, argued Mr. Chandra, resulted in dilution of the sanctity and efficacy of the revisional exercise not because it was *dehors* the statute but because the exercise of quasi-judicial powers were entrusted to an officer at the lower rung of the hierarchy.

23. Section 2(h) defines the term 'Director' as under:

> *"'Director' means an officer appointed by the State Government as Director of Mandis and includes any other officer authorised by the Director to perform all or any of his functions under this Act."*

24. It is manifest from a plain reading of the above that the expression 'Director' wherever used in the Act including Section 33 thereof includes an officer authorised by the Director to perform all or any of his functions under the Act. Significantly enough neither before the High Court nor before us was it contended that the officer who had handled and disposed of the revision petitions filed by the dealers, was not duly authorised in terms of Section 2(h) or that the power of the Board under Section 32 of the Act was not duly

delegated to the Director. It is not, therefore, a case of inherent lack of jurisdiction. All that the appellants propose is that the revisions could either be heard by the Board itself or made over for disposal to a Committee of officers senior enough to decide issues of fact and law involving substantial financial stakes of the parties. Now it is true that the stakes involved in the present batch of cases are substantial and those called upon to satisfy the demands raised against them would like their cases to be heard by a senior officer or a Committee of officers to be nominated by the Board. But in the absence of any data as to the number of cases that arise for consideration involving a challenge to the demands raised by the Market Committee and the nature of the disputes that generally fall for determination in such cases, it will not be possible for this Court to step in and direct an alteration in the mechanism that is currently in place. The power to decide the revisions vests with the Board who also enjoys the power to delegate that function to the Director. So long as there is statutory sanction for the Director to exercise the revisional power vested in the Board, any argument that such a delegation is either

impermissible or does not serve the purpose of providing a suitable machinery for adjudication of the disputes shall have to be rejected. It is noteworthy that Rule 133-A of the Rules framed under the Act regulates the filing and disposal of the revision petitions under Section 32 thereof. This provision was inserted with effect from 11th May, 2008 and empowers the Board either to decide the revision petition itself or to nominate an officer for doing so. It also provides for grant of an opportunity of being heard to the person concerned and a time bound disposal of the revision. Rule 133-A is, therefore, a step in the direction of providing a machinery under the Act for adjudication of disputes that may arise between dealers on the one hand and the market committee on the other. That being so, the Act is not completely bereft of a machinery nor can it be said that the observations made by this Court in ***Ram Chandra Kailash Kumar's*** case (supra) have gone unheeded. All that we need to add is that in order to make the Board's revisional power more effective and its exercise more transparent and credible, the Board would do well to delegate the power of hearing and disposal of the revision petitions to a senior

and experienced officer who is well-versed in dealing with legal issues concerning assessment and/or determination of the liability under the Act. Beyond that it is neither necessary nor proper for us to say anything. Question No.1 is answered accordingly.

Re: Question No.2

25. Explanation to Section 17(iii) of the Act raises a presumption to the effect that any specified agricultural produce taken out of or proposed to be taken out of a market area by or on behalf of a licensed trader has been sold within such area; the price of the produce so presumed to be sold is then determinable in the manner prescribed. The Explanation reads:

> ***Explanation.-*** *For the purpose of clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed."*

26. It is fairly evident that the presumption is rebuttable in nature; for it holds good only till the contrary is not proved by the dealer. The question is what is the standard of proof

required to rebut the statutory presumption; and whether the Market Committee, the Director or the High Court applied the correct legal standard for holding that the presumption was not effectively rebutted.

27. Relying upon the decision of this Court in ***Sodhi Transport Co. & Ors. v. State of U.P. & Ors. (1986) 2 SCC 486***, Mr. Sudhir Chandra contended that the standard of proof applicable was that applied in civil actions which are decided on the preponderance of probability and not the higher standard of "proof beyond reasonable doubt" applied in criminal cases. The appellants had according to the learned counsel discharged the burden of rebutting the presumption by adducing evidence which tended to show that the *ghee* manufactured by them had not been sold within the market area to attract the levy of market fee on the price thereof. He urged that the produce had been removed out of the market area on transfer of stock basis without any element of sale in such transfers. Reliance was in support placed by Mr. Chandra upon an agreement which Heinz had executed with its Clearing and Forwarding (C&F) Agent in the State of Rajasthan apart from other material

adduced before the Market Committee, in a bid to prove that the stocks in question had not been sold within the market area.

28. Appearing for the Market Committee Mr. Rakesh Dwivedi argued that the mere production of some evidence howsoever feeble was not enough to rebut the presumption which would continue to hold the field till such time the trader adduced evidence to prove the contrary. It was only "proof to the contrary" that could rebut the presumption and for doing so just any material or evidence was not enough. It must, argued Mr. Dwivedi, be evidence that would clearly establish that there was indeed no sale effected within the market area as presumed in terms of the Explanation. The appellant-companies had failed to do so as before the Market Committee and the Director and even before the High Court.

29. Black's Law Dictionary 5th Edition, 1979, defines 'Presumption' as under:

> *"A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted."*

30. The same dictionary defines ‘Rebut’ as under:

> *“In pleading and evidence, to defeat, refute, or take away the effect of something. When a plaintiff in an action produces evidence which raises a presumption of the defendant’s liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to “rebut it.”*

31. Both in England and America, law permits raising of presumptions both conclusive and rebuttable. There is considerable judicial authority in both jurisprudential systems, dealing with the question of the standard of proof required to rebut a presumption whether statutory or at common law. In England, the civil standard of proof is defined by Lord Denning in ***Miller v. Minister of Pensions [1947] 2 All ER 372***, thus:

> *“…….It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice.”*

32. Three years later came ***Bater v. Bater [1950] 2 All ER 458***, in which the civil standard of proof to an extent modified, was seen by some jurists as somewhat confusing the concept so clearly stated in ***Miller'***s case (supra). In ***Bater*** (supra) the Court declared that neither civil nor criminal standard of proof was an absolute standard. A 'civil case' may be proved by a preponderance of probability, explained, Denning J.,

> *".....but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a the degree of probability required should be commensurate with the occasion."*

33. Then came ***Hornal v. Neuberger Products Ltd. [1957] 1 Q.B. 247***, where the Court held that in a civil action where fraud or other matter which is or may be a crime is alleged against a party or against persons not parties to the action, the standard of proof to be applied is that applicable in civil actions generally, namely, proof on the balance of probability, and not the higher standard of

proof beyond all reasonable doubt required in criminal matters; but there is no absolute standard of proof, and no great gulf between proof in criminal and civil matters; for in all cases the degree of probability must be commensurate with the occasion and proportionate to the subject-matter. The elements of gravity of an issue are part of the range of circumstances which have to be weighed when deciding as to the balance of probabilities. The law in England, therefore, is that degree of probability must be commensurate with the subject-matter. This implies that graver the charge in a civil action, higher the degree of proof required. A civil case may be proved by preponderance of probability, but the degree of probability would depend upon the nature of the subject-matter.

34. In the American system of justice, the Courts have adopted a somewhat different approach, though the essence, may appear to be the same as is accepted by the Courts in England. In America, standard of proof depends upon the degree of confidence which the American society thinks the fact finder should have in the correctness of factual conclusions for a particular type of adjudication.

[See ***Addington v. Texas, 441 U.S. 418, 423 (1979)***]. Proof may be required by a preponderance of the evidence, by clear and convincing evidence or by proof that is beyond reasonable doubt. Proof by 'clear and convincing evidence' lies between standard of 'preponderance of the evidence' at one end and 'beyond a reasonable doubt' at the other. Clear and convincing evidence has been described as evidence that produces in the mind of the trier of the fact an abiding conviction that the truth of the factual contentions is highly probable. [See ***32A Corpus Juris Secundum Evidence § 1624***].

35. We may at this stage refer to a few decisions of this Court on the subject. In ***Izhar Ahmad Khan v. Union of India and Ors***. ***(AIR 1962 SC 1052)***, this Court was examining the provisions of Schedule III Rule 3 of the Citizenship Rules, 1956 which made it obligatory on the enquiring authority to infer the acquisition of citizenship of a foreign country from the fact that the passport of foreign country has been obtained by an Indian citizen. The question was whether a rule about irrebuttable presumption is a rule of evidence or not. The question had arisen in the

context of rule-making power of the Central Government under Section 9(2) of the Citizenship Act, 1955 according to which the Central Government could prescribe rules of evidence subject to which the competent authority could hold an inquiry. The contention urged was that instead of prescribing a rule of evidence the Central Government had by enacting Rule 3 and raising a conclusive presumption regarding the acquisition of citizenship of another country, framed a rule of substantive law and not a rule of evidence.

36. This Court held that while answering any such question it is not correct to assume that all rules prescribing irrebuttable presumption are rules of substantive law. Any such question, declared this Court, has to be answered after examining the rule and its impact on the proof of the fact in issue. Explaining the juristic basis of a rebuttable presumption and the approach to be adopted in applying such presumptions to different situations this Court observed:

> ***"25.*** *It is conceded, and we think, rightly, that a rule prescribing a rebuttable presumption is a rule of evidence. It is necessary to analyse what the rule about the rebuttable presumption really means. A fact A which has relevance in the proof of fact B and inherently has some degree of probative or persuasive*

value in that behalf may be weighed by a judicial mind after it is proved and before a conclusion is reached as to whether fact B is proved or not. When the law of evidence makes a rule providing for a rebuttable presumption that on proof of fact A, fact B shall be deemed to be proved unless the contrary is established, what the rule purports to do is to regulate the judicial process of appreciating evidence and to provide that the said appreciation will draw the inference from the proof of fact A that fact B has also been proved unless the contrary is established. In other words, the rule takes away judicial discretion either to attach the due probative value to fact A or not and requires prima facie the due probative value to be attached in the matter of the inference as to the existence of fact B, subject, of course, to the said presumption being rebutted by proof to the contrary.

xxx xxx xxx
xxx xxx xxx

Thus, the rule of rebuttable presumption adds statutory force to the natural and inherent probative value of fact A in relation to the proof of the existence of fact B and in adding his statutory value to the probative force of fact A, the rule, it is conceded, makes a provision within the scope and function of the law of evidence. If that is so, how does it make a difference in principle if the rule adds conclusive strength to the probative value of the said fact A in relation to the proof of the existence of fact B? In regard to the category of facts in respect of which an irrebuttable presumption is prescribed by a rule of evidence, the position is that the inherent probative value of fact A in that behalf is very great and it is very likely that when it is proved in a judicial proceeding, the judicial mind would normally attach great importance to it in relation to the proof of fact B. The rule steps in with regard to such facts and provides that the judicial mind should attach to the said fact conclusiveness in the matter of its probative value. It would be noticed that as in the case of a rebuttable presumption, so in the case of an irrebuttable presumption, the rule purports to assist the judicial mind in appreciating the existence of facts. In one case the probative value is statutorily strengthened but yet left open to rebuttal, in the other case, it is statutorily strengthened and placed beyond the pale of rebuttal. Considered from this point of view, it seems rather difficult to accept the theory that whereas a rebuttable

presumption is within the domain of the law of evidence, irrebuttable presumption is outside the domain of that law and forms part of the substantive law."

37. In ***Harbhajan Singh v. State of Punjab & Anr. (AIR 1966 SC 97)***, this Court was examining the nature and scope of onus of proof which an accused person had to discharge in seeking protection of the Exception 9 to Section 499 IPC. This Court held that onus to prove its case lies on the prosecution no matter what the charge or where the trial is held. The principle that prosecution must prove the guilt of the prisoner is part of the common law of England and also part of the criminal law of this country. Having said so, the Court further declared that if an exception is taken by an accused person he is not required to justify his plea beyond a reasonable doubt and that the degree and character of proof which he is expected to furnish in support of his plea cannot be equated with the degree and character of proof that is expected of the prosecution. This Court with approval quoted the English decision in ***R. v. Clark (1921 61 SCR 608)***, which was

approved by Lord Hailsham in ***Sodeman v. R [1936] 2 All ER 1138*** to the following effect:

> *".....the necessity for excluding doubt contained in the rule as to the onus upon the prosecution in criminal cases might be regarded as an exception founded upon considerations of public policy. There can be no consideration of public policy calling for similar stringency in the case of an accused person endeavouring to displace a rebuttable presumption.*"

38. We may also refer to the decision of this Court in ***Sodhi Transport Co.*** (supra) upon which heavy reliance was placed by learned counsel for the appellant in support of the plea that the standard of proof required of the person against whom statutory presumption is raised is a simple preponderance of probability and no more. In ***Sodhi Transport Co.*** (supra) this Court was examining the provisions of Section 28-B of Uttar Pradesh Sales Tax Act, 1948 which was alleged to be ultra vires of the Constitution inasmuch as it permitted the authorities to raise a rebuttable presumption regarding the sale of goods having taken place inside the State of U.P. if the transit pass is not handed over to an officer at the check-post or the barrier near the place of exit from the State. Such a presumption with an object of preventing evasion of tax, it was

contended, as regards the proof of a set of circumstances which would make a transaction liable to tax was tantamount to conferring on the authority concerned the power to levy a tax which the legislature could not otherwise levy. Repelling the contention this Court held that a rebuttable presumption has the effect of shifting the burden of proof, for the authority concerned, before levying sales tax arrives at the conclusion about the exigibility of the tax by a judicial process and only upon his satisfaction that the goods have been sold inside the State. In doing so, the authority no doubt relies upon the statutory rules and presumption contained in Section 28-B of the Act. But such presumption can be rebutted by the person against whom action is taken under Section 28-B when the person concerned has the opportunity to displace the presumption by leading evidence. That being so, provision of Section 28-B inasmuch as the same raises a rebuttable presumption did not suffer from any vice of unconstitutionality. This Court observed:

> ***"14.*** *A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When*

> *presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances."*

39. Mr. Chandra, however, laid considerable emphasis on the words "tending to show that the real fact is not as presumed", to argue that the test applied by this Court in rebuttable presumptions had been the test of 'preponderance of probability'. We do not think so. It is well-settled that a decision is an authority for the point it decides. It is equally well-settled that the text of the decision cannot be read as if it were a statute. That apart the expression used by this Court is "evidence fairly and reasonably tending to show", which signifies that it is not just any evidence, howsoever shaky and nebulous that would satisfy the test of preponderance of probability to rebut the statutory presumption but evidence that can by proper and judicial application of mind be said to be fairly and reasonably showing that the real fact is not as

presumed. In other words the evidence required to rebut a statutory presumption ought to be clear and convincing, no matter the degree of proof may not be as high as proving the fact to the contrary beyond a reasonable doubt. The heightened standard of proof required to rebut a presumption raised under the statute at hand is in our view applicable for two distinct reasons. The first and foremost is that the presumption is raised in relation to a fiscal statute. While the amount payable is not a tax it is nevertheless a statutory levy which is attracted the moment the transaction of sale takes place within the market area. Goods, admittedly produced within the market area and not consumed within such area are presumed to be leaving pursuant to a transaction of sale unless the contrary is proved. That the goods are produced within the market area is not in dispute in the instant case. That they left the market area is also admitted. In the ordinary course, therefore, the presumption would be that the goods left pursuant to a sale unless the appellants are in a position to prove the contrary.

40. The second reason for applying a higher standard of proof than mere preponderance of probability is that the nature of transaction pursuant to which the goods are removed from the market area is within the exclusive knowledge of the appellants or the persons to whom such goods are being dispatched. In other words, the circumstances in which the transactions, which the statute presumes to be sales, but which the appellants claim are simple transfer of stocks are within the exclusive knowledge of the appellants. The entire evidence relevant to the transactions, being available only with the appellants and the true nature of the transactions being within their special knowledge, there is no reason why the rebuttal evidence should not satisfy the higher standard of proof and clearly and convincingly establish that the fact presumed is not the actual fact. Our answer to Question No.2 accordingly is that the evidence intended to rebut the statutory presumption under Section 17 of the Adhiniyam ought to be clear and convincing evidence showing that what is presumed under the provision is not the real fact.

Re: Question No.3

41. The Market Committee and the Director have recorded concurrent findings of fact to the effect that the petitioners had failed to establish that no sale of the stocks of *Ghee* had taken place within the Mandi limits at Aligarh. The statutory presumption that any transfer of stocks from within the Mandi area, was pursuant to a sale was thus held to have remained unrebutted. A challenge to the above finding would necessarily raise the question as to the scope of judicial review of such findings. We need to sail smooth over that aspect before examining the validity of the orders within the permissible parameters of judicial review.

42. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is instantly reminded of the classic and oft quoted passage from ***Council of Civil Service Unions (CCSU) v. Minister for the Civil Service [1984] 3 All ER 935,*** where Lord Diplock summed up the permissible grounds of judicial review thus:

> "*Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.*
>
> *By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.*
>
> *By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system... ...*
>
> *I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice*."

43. The above principles have been accepted even by this Court in a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has

been extensively examined and the principles applicable clearly enunciated. *In* ***Tata Cellular v. Union of India (1994) 6 SCC 651***, this Court identified the grounds of judicial review of administrative action in the following words :

> *"The duty of the court is to confine itself to the question of legality. Its concern should be :*
> 1. *Whether a decision-making authority exceeded its powers?*
> 2. *Committed an error of law,*
> 3. *committed a breach of the rules of natural justice,*
> 4. *reached a decision which no reasonable tribunal would have reached or,*
> 5. *abused its powers.*
>
> *Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :*
>
> *(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
>
> *(ii) Irrationality, namely, Wednesbury unreasonableness.*
>
> *(iii) Procedural impropriety."*

44. Reference may also be made to the decision of this Court in ***State of Punjab v. Gurdial Singh (1980) 2 SCC 471*** where Krishna Iyer, J. noticed the limitations of judicial review and declared that the power vested in the Superior

Courts ought to be exercised with great circumspection and that interference may be permissible only where the exercise of the power seems to have been vitiated or is otherwise void on well established grounds. The Court observed:

> *"The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock-jawed save where the power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset."*

45. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the decision-making process. (See ***Chief Constable of North Wales Police v. Evans [1982] 3 All ER 141***). As a matter of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the Court are observed, the Courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power. Justice Frankfurter's note of caution in ***Trop v. Dulles 356 U.S. 86 (1958)*** is in this regard apposite when he said:

> *"All power is, in Madison's phrase, 'of an encroaching nature'. Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint."*

46. That the Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the Court does not supplant 'the feel of the expert' by its own review, is also fairly well-settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. [*See* ***Union of India v. S.B. Vohra, (2004) 2 SCC 150, Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223***, and ***Thansingh Nathmal and Ors. v. Supdt. of Taxes and Ors., Dhubri, AIR 1964 SC 1419***].

47. In ***Dharangadhra Chemical Works Ltd. v. State of Saurashtra and Ors., AIR 1957 SC 264,*** this Court held that decision of a Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in

proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence.

48. To the same effect is the view taken by this Court in ***Thansingh Nathmal***'s case (supra) where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

49. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from ***Reid v. Secretary of State for Scotland [1999] 1 All ER 481,*** which succinctly sums up the legal proposition that judicial review does not allow the Court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case.

> *"Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for*

example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence."

50. In its order dated 13th September, 1995 the Mandi Samiti, Aligarh, has upon examination of the evidence adduced before it recorded a finding that the same did not inspire confidence for a variety of reasons. The Samiti has found that the appellants had failed to produce any evidence as to when and where any transaction regarding sale and purchase of *ghee* manufactured within Mandi area was finalised. No evidence was adduced by the appellants to show as to who had been instrumental in finalising such sale transactions out of its officers and employees. If the product was being sold under the directions of the officers of the Company it should have been possible for the company to firmly establish the identity of such officers and furnish details as to when and where the sale transaction of different stocks of *ghee* sent out from the market area was

finalised. The Samiti was of the view that although the appellant had claimed that there were separate C&F agreements with various agents appointed by it at several destinations outside the mandi area the appellant had produced only two of such agreements in support of its case that such C&F agents existed at all such destinations. The Mandi Samiti noticed that 25 consignments relevant to the order passed by the Samiti on 13th September, 1995 were sent out of the Mandi area but the appellant-company had not adduced evidence pertaining to all such consignments. Even in regard to consignments where such evidence had been adduced the Samiti noticed shortcomings that adversely affected the credibility of the evidence. For instance, there were no Book Numbers on the sales invoice-cum-challans relied upon by the company. The evidence was in the form of loose papers, hence not reliable. It was noticed that although payments were mentioned on the documents submitted, no particulars as to who made the payment and to whom, were available. The Samiti also noticed that signatures of the vendor of the goods on the sale invoice-cum-challan were absent. It was,

therefore, not clear whether the person making the sale was an individual from the company or one representing the C&F agent. The Samiti found information furnished by the appellant incomplete and discrepant in regard to the sales made in Jodhpur, Jaipur and Indore. The Samiti on the basis of the above observations took the view that the so called C&F agents were the actual purchasers of the *ghee* from the company and the C&F agreements, two of which were placed on record, were only meant to avoid payment of market fee.

51. In its order dated 3rd July, 1997 the Mandi Parishad which heard the revision against the above order of the Mandi Samiti did not find any error in the appreciation of the evidence *per se* to warrant a different view. It took the view that no evidence was produced to show as to why a particular quantity of ghee was to be delivered to a particular place. The transport *biltis* did not mention as to who shall pay the freight for the transportation of the *ghee*. This is because if the transport of *ghee* outside Aligarh, was a stock transfer and not pursuant to a sale made within the market area, the payment of freight would have been the

responsibility of the company for there is no transfer of the ownership in that case to any third party. The company should have in that case firmly established that the transport charges payable in regard to the transport of the stocks of *ghee* out of the mandi area were paid by it and by no one else. Keeping in view the fact that the company is doing business worth crores of rupees and maintains regular accounts book, both in the ordinary course of its business as also for tax purposes, there was no reason why the company should have failed to establish that the transport charges were paid by it. The Director exercising powers of the Mandi Parishad also held that there was a break in the chain of reasons in as much as the appellants did not bring forth the link evidence giving details of the sale transactions pursuant to which C&F agents had made the delivery of the goods.

52. The orders passed by the Mandi Samiti and the Director exercising powers of the Mandi Parishad thus clearly show that there was no clear and convincing evidence to establish that the presumption arising under

Section 17(iii) of the Act stood rebutted and that the actual was not, what was presumed under the said provision.

53. To the same effect are the findings recorded by the Mandi Samiti in its order dated 7th July, 1998 with minor variations here and there. The Mandi Samiti, *inter alia*, noticed that while some of the transport consignment note showed that the same would be billed at Bombay, some others showed that they would be billed at Aligarh. The amount of freight was also not mentioned nor details regarding the payment of these consignments notes produced. It was not established whether the payment was to be made by the appellants or the recipients of the goods. Hence, the same were insufficient to prove that no sale had taken place inside the mandi area.

54. There was also no evidence to prove that the rent of godown was being paid by the appellant-company nor was there any evidence to show the procedure followed for the sale of the products at Indore and Jaipur. Twenty one of the invoices made for Jaipur had no signature of the recipient of the goods nor it was clear as to who received the payment and what was the mode of making of such payments. The

Samiti noted that these invoices were not in book form but were in the form of loose papers and did not bear any book number. No evidence was, according to the Mandi Samiti, produced by the appellant regarding the decision of the company's marketing department in connection with the stock transfer and in connection with the directions given to the Aligarh office for transfer of a particular consignment sent to a particular destination and in a particular quantity.

55. The Samiti also noted that the appellants had not produced any evidence to show that the C&F agents were not authorized to settle the bargain for sale of goods and were supposed to simply follow the directions of the company as regards the delivery of specified quantity to a specified party upon receipt of payment. No evidence regarding instructions to the C&F agents was adduced before the Mandi Samiti to prove that the company continued to exercise complete dominion over its stocks and also the power to sell the goods and to receive payments kept in the custody of the C&F agent.

56. Suffice it to say that the Mandi Samiti appreciated each piece of evidence and found the same to be

insufficient to hold that the sale transactions had, in fact, taken place outside the mandi area so that the presumption arising under Section 17(iii) of the Act stood rebutted. The Director exercising powers of the Mandi Parishad has in its order dated 25th September, 2004 once again evaluated the evidence and concurred with the view taken by the Mandi Samiti.

57. In the light of the legal position stated in the earlier part of this order, it is neither feasible for us to embark upon an exercise of re-appreciating the entire material or to substitute our own findings for those recorded by the Mandi Samiti and the Director/Mandi Parishad. So long as the finding recorded by the Mandi Samiti and the Mandi Parishad are not irrational or perverse, and so long as the view taken by them is a reasonably possible view, this Court would not interfere.

58. In course of arguments at the Bar, we repeatedly asked Mr. Chandra as to why the appellants had failed to adduce the material which would throw a flood of light as to the true nature of the transaction within or outside the mandi area. Mr. Chandra's reply was that the material

was available and could be produced if so required. Some of this material which was with the appellant but was not produced was sought to be introduced even at the stage of hearing before us, while the rest could, argued Mr. Chandra be laid before the Samiti, if an opportunity to do so could be granted to the appellant.

59. We regret our inability to accede to any such request. We do not think that a party who has had ample opportunity before the authorities below, to substantiate its claim can have the luxury of either producing material for the first time in the Supreme Court or ask for a remand to enable it to do what it ought to have done at the appropriate stage. It was not the contention of the appellants that they were not given a fair opportunity to prove their case before the authorities below. As a matter of fact, orders passed by the Mandi Samiti and the Mandi Parishad show that sufficient opportunity was indeed afforded to the appellants and the matter had remained pending for a number of years before those authorities.

60. Mr. Chandra contended that the appellants had been requesting the authorities to indicate as to what kind of

material would satisfy them but since the authorities had failed to respond to that query the appellant had not produced the bulk of the material which was relevant and available with them. We do not think that such a procedure was legally permissible or even called for in the facts and circumstances of the case. As to what material would be sufficient to prove the case of the party who goes to the Court for relief is a matter for the party or those in charge of its legal affairs to determine. No litigant can ask for guidelines from the Court or statutory body as to the evidence which the party should adduce to substantiate its claim. The query made by the appellants as to what material if adduced would satisfy the authorities was, therefore, misplaced and a red herring to say the least. This is particularly so when the appellants were in no way handicapped on account of lack of resources or capacity to get the best of legal advice. Companies with such tremendous resources as the appellants before us cannot find a shortcut to the discharge of their obligations under the law by asking the Court or the authority concerned to indicate as to what kind of evidence would be sufficient in

its opinion to entitle them to the refund of the amount paid or payable towards market fee.

61. So also, no remand ought to be made only to enable a party to produce additional material. A remand is neither mechanical nor a routine affair. If there is nothing wrong in the orders under challenge, there is no question of interference with the same. There is no reason for this Court to set the clock back and start a process which would take the parties another decade or so to come to terms with the problem.

62. In the result these appeals as also W.P. (C) No.144/2005 fail and are hereby dismissed with cost assessed at Rs.15,000/- in each case.

.....J.
(T.S. THAKUR)

.....J.
(**DIPAK MISRA)**

New Delhi
March 23, 2012